

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

Eric Forsythe, Individually And On Behalf Of All Others Similarly Situated,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 04cv10584 (NG)
vs.	)	
	)	
Sun Life Financial Inc., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
Larry R. Eddings, Individually And On Behalf Of All Others Similarly Situated,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 04cv10764 (NG)
vs.	)	
	)	
Sun Life Financial Inc., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION  
FOR APPOINTMENT OF CO-LEAD COUNSEL  
AND APPOINTMENT OF LIAISON COUNSEL**

**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
FACTUAL BACKGROUND.....	1
ARGUMENT.....	2
CONCLUSION.....	3

Plaintiffs Eric Forsythe and Larry R. Eddings (“Plaintiffs”), by their counsel, hereby move this Court for an Order (attached hereto) approving Plaintiffs’ selection of: (i) Milberg Weiss Bershad & Schulman LLP (“Milberg Weiss”) and Weiss & Yourman as Co-Lead Counsel to oversee the above-captioned actions (the “Actions”); and (ii) Moulton & Gans, P.C. as Liaison Counsel.

### **INTRODUCTION**

As of May 13, 2004 there were two related actions pending in this District brought on behalf of a class of investors in mutual funds belonging to the Massachusetts Financial Services Company (“MFS”) family of mutual funds (the “MFS Funds”), and derivatively on behalf of the MFS Funds, against the MFS Funds investment advisers, their corporate parents and the MFS Funds trustees during class periods beginning March 24, 1999 and ending November 17, 2003 (the “Class Period”). The Actions allege a variety of claims, specifically violations of §§ 34(b), 36(b) and 48(a) of the Investment Company Act of 1940 (the “Investment Company Act”), violations of §§ 206 and 215 of the Investment Advisers Act of 1940 (the “Investment Advisers Act”), breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty.

### **FACTUAL BACKGROUND**

The Actions both allege that the MFS investment advisers named as defendants (the “Investment Adviser Defendants”) breached their duties to the MFS Funds and MFS investors by drawing upon the assets of the MFS Funds to pay brokerages, including Morgan Stanley DW Inc. (“Morgan Stanley”), to aggressively push MFS Funds over other funds, and also allege that such investment advisers concealed such payments from investors by disguising them as brokerage commissions.

**ARGUMENT****MILBERG WEISS AND WEISS & YOURMAN  
SHOULD BE APPOINTED AS CO-LEAD COUNSEL**

This Court should appoint the law firms of Milberg Weiss and Weiss & Yourman as Co-Lead Counsel of the Actions. Milberg Weiss is counsel for plaintiff Eric Forsythe. Weiss & Yourman is counsel for plaintiff Larry R. Eddings. Milberg Weiss and Weiss & Yourman have substantial experience in the prosecution of shareholder and securities class and derivative actions, and have the resources necessary to efficiently conduct this litigation. *See* Exhibits A and B, Milberg Weiss and Weiss & Yourman Firm Resumes.<sup>1</sup> Milberg Weiss and Weiss & Yourman are well-qualified to act as Co-Lead Counsel by virtue of their resources, experience and track record in the area of class action litigation. Milberg Weiss has spearheaded some of the largest and most complex class actions in history, such as *In re NASDAQ Market-Makers Antitrust Litig.*, Civ. No. 3996 (S.D.N.Y.), *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92 (S.D.N.Y.), and *In re Enron Corp., Sec. Litig.*, No. H-01-3624 (S.D. Tex.). Weiss & Yourman has been commended by several courts for its expertise and ability in prosecuting such cases as *In re United Telecomm., Inc. Sec. Litig.*, No. 90-2251-0 (D. Kan.), *In re VeriFone Inc. Sec. Litig.*, No. C-93-3640 DCJ (N.D. Cal.), and *In re Western Digital Sec. Litig.*, SACV 91-375(A) GLT (RWRx) (C.D. Cal.). Accordingly, the Court can rest assured that Milberg Weiss and Weiss & Yourman will similarly be capable of harmonizing the efforts of all counsel involved in this litigation.

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<sup>1</sup> Exhibits A and B are attached to the Declaration of Kim E. Levy In Support Of The Motion For Appointment Of Co-Lead Counsel And Appointment Of Liaison Counsel (the "Levy Decl."), submitted contemporaneously herewith.

The law firm of Moulton & Gans, P.C. should be appointed as Liaison Counsel. The appointment will promote judicial economy and is consistent with the recommendations of § 20.221 of the Manual for Complex Litigation (3d ed. 1995) which discusses coordination in multiparty litigation.

### **CONCLUSION**

For the foregoing reasons, this Court should appoint Milberg Weiss and Weiss & Yourman as Co-Lead Counsel and Moulton & Gans, P.C. as Liaison Counsel and grant any such further relief as this Court deems just and appropriate.

Dated: May 14, 2004

Respectfully submitted,

**MOULTON & GANS, P.C.**

By: /s/ Nancy Freeman Gans

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**CERTIFICATE OF SERVICE**

I, Nancy Freeman Gans, hereby certify that a true copy of the above document was served upon the attorney of record for each party by hand on May 14, 2004.

/s/ Nancy Freeman Gans  
Nancy Freeman Gans